REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed September 27, 2006. This Reply encompasses a bona fide attempt to overcome the rejections raised by the Examiner and presents amendments as well as reasons why Applicant believes that the claimed invention, as amended, is novel and unobvious over the applied prior art. Accordingly, Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 1-14 and 16-19 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,974,396 ("Anderson"). The rejections are respectfully traversed.

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

As to Claim 1, Anderson is hereby distinguished under 35 U.S.C. § 102(e) at least because Anderson neither expressly nor inherently describes a market analysis system comprising a software program stored on a computer readable medium executable to "receive a set of transaction data from an electronic exchange." The

Examiner has not provided any explanation as to the applicability of the cited portions of Anderson to Claim 1. The cited col. 2, lines 46-51, of Anderson specifically describes the requirements of an integrated system which allows individual retailers to determine customer needs and preferences with respect to retail products sold. See, Anderson, col. 2, lines 40-46. The integrated system of Anderson, referred to as the frequent shopper system, is said to provide a retail business entity with the ability to determine and analyze buying behaviors of its customers. See, Anderson, col. 5, lines 49-54. To do so, the frequent shopper system of Anderson includes conventional retail point of sale systems link up to a retailer supervisory processor 22. See, Anderson, col. 6, lines 5-11 and 49-53. Anderson explicitly describes that product transactions that occur at the retail point of sale systems may be forwarded to the retailer supervisory processor 22. See, Anderson, col. 6, lines 27-29.

The term "point of sale," or POS as it is more commonly abbreviated, refers to the capturing of data and customer payment information at a physical location when goods or services are bought and sold. That is, Anderson describes the exchange of product and payment at a physical location. Anderson does not describe electronic exchanges. Moreover, the frequent shopper system of Anderson is limited to a single business entity, referred to as a retailer. *Supra*. It only provides information to the retailer regarding the product transactions at the retailer's POS systems. Anderson does not describe electronic exchanges between a plurality of potential purchasers and a plurality of suppliers (i.e., different business entities). Therefore, the claim limitation of "receive a set of transaction data from an electronic exchange" is distinguishable under 35 U.S.C. §102(e) from forwarding product transactions that occur at the retail point of sale systems as described by Anderson.

As to Claim 2, the cited col. 10, lines 31-53 of Anderson explicitly describes that posted information for each consumer or product cluster is divided logically into three tables. Anderson neither expressly nor inherently describes "wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis, a correlation analysis, a request for quote analysis and an auction

analysis," as recited in Claim 2. The Examiner has not provided any explanation as to the applicability of the cited col. 10, lines 31-53 of Anderson to Claim 2.

As to Claim 3, the cited col. 2, line 67-col. 3, line 7 of Anderson explicitly describes that product, consumer, and transactional data are maintained in a relational database for a retailer who then queries the database and accumulates data accordingly. Anderson neither expressly nor inherently describes "software program ... executable to store a set of results from the statistical analysis in a database," as recited in Claim 3. The Examiner has not provided any explanation as to the applicability of the cited col. 2, line 67-col. 3, line 7 of Anderson to Claim 3.

As to Claim 4, the cited col. 11, lines 6-19 of Anderson explicitly describes that queried information from the database may be communicated to the printer and direct mail subsystem via modem, direct cabling link, or by manually transferring the queried information in a flat file. Anderson neither expressly nor inherently describes "software program ... executable to communicate a set of results of the application of the statistical analysis to a user." As discussed above, the database of Anderson stores product, consumer, and transactional data for a single retail business entity. It does not maintain any results from a statistical analysis applied on market transactions occurred at an electronic exchange. The Examiner has not provided any explanation as to the applicability of the cited col. 11, lines 6-19 of Anderson to Claim 4.

As to Claim 5, the cited col. 4, lines 19-49 of Anderson neither expressly nor inherently describes "software program ... executable to communicate the set of results in a format compatible with a revenue management software program." The Examiner seems to apply membership cards and promotional literature such as coupons to the claim limitation of "a revenue management software program." At the time of the invention, Revenue Management was already a widely accepted discipline that is providing increased revenue and profitability in the airline, hospitality, car rental, cruise line, railroad, and television broadcast industries. Since it's a hard management science, a revenue management software program employs complex mathematical concepts and high-powered computers to crunch a huge amount of marketing

information in order to maximize revenues in changing market conditions. Thus, "membership cards and promotional literature such as coupons" do not whatsoever anticipate "a revenue management software program," as the Examiner has alleged.

As to Claims 6-7, the cited col. 3, line 65-col. 4, line 6 of Anderson explicitly describes a user interface that allows a retailer to input specific queries to retrieve particular types of information from a relational database. Anderson neither expressly nor inherently describes "software program ... executable to communicate the set of results [of the application of the statistical analysis] in response to a user request." As discussed above, the database of Anderson stores product, consumer, and transactional data for a single retail business entity. It does not derive market level results and it does not maintain any results from a statistical analysis applied on market transactions occurred at an electronic exchange. Since such statistical analysis results are non-existent in the database, no software program would have been executable to communicate them in response to a user request. The Examiner has not provided any explanation as to the applicability of the cited col. 3, line 65-col. 4, line 6 of Anderson to Claim 6. Similarly, since Anderson neither expressly nor inherently describes transaction data from an electronic exchange, no software program would have been executable to return a summary thereof. Thus, Anderson does not anticipate "software program ... executable to return a summary of the set of transaction data," as recited in Claim 7.

As to Claim 8, Anderson is hereby distinguished under 35 U.S.C. § 102(e) at least because Anderson neither expressly nor inherently describes a system for analyzing transactions at an electronic exchange comprising "a database storing a set of transaction data received from the electronic exchange where market transactions are conducted electronically via the Internet." The Examiner has not provided any explanation as to the applicability of the cited portions of Anderson to Claim 8. The cited Fig. 1, reference number 26 of Anderson shows a consumer purchase repository 26 receiving data captured at a physical location (retail POS system 20) where product transactions occur. Anderson does not seem to have anything to do with transaction

data received from electronic exchanges where market transactions are conducted electronically via the Internet among multiple sellers and buyers.

As to Claim 9, the cited col. 5, lines 50-61 of Anderson explicitly describes categorizing products and/or consumers. Anderson neither expressly nor inherently describes "a configuration manager operable to define a standard pricing group" which "comprises an aggregation of data from the set of transaction data" as recited in Claims 8-9 in order to determine how transactions should be categorized. As described in the Specification, "because the transactions that occur at [an] electronic exchange ... may be for unrelated products or services [provided by various suppliers], it may be desirable to further group the data so that meaningful statistical analyses can be perform." See, Specification, page 10, paras. 26-27. Unlike the claimed invention, Anderson's frequent shopper system does not appear to categorize beyond a single retailers' products and customers.

As to Claim 10, the cited col. 10, lines 31-53 of Anderson explicitly describes that posted information for each consumer or product cluster is divided logically into three tables. Anderson neither expressly nor inherently describes "wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis, a correlation analysis, a request for quote analysis, and an auction analysis," as recited in Claim 10. The Examiner has not provided any explanation as to the applicability of the cited col. 10, lines 31-53 of Anderson to Claim 10.

As to Claim 11, as discussed above with respect to Claims 1 and 8, Anderson fails to describe an electronic exchange where market transactions are conducted electronically via the Internet. Consequently, Anderson fails to describe a communications server operable to, *inter alia,* receive electronic transactions as recited in Claim 11.

As to Claim 12, as discussed above with respect to Claims 1 and 8, Anderson fails to describe an electronic exchange where market transactions are conducted electronically via the Internet. Moreover, in the cited Fig. 1, reference numbers 24-26 of

Anderson show consumer data flow from consumer application subsystem 24 to consumer purchase repository 26 within a single retailer's frequent shopper system. Anderson fails to describe an input interface comprising, *inter alia*, "a transaction interface operable to receive the set of transaction data" from an electronic exchange where market transactions are conducted electronically via the Internet, as recited in Claim 12.

As to Claim 13, the cited col. 6, lines 36-48 of Anderson neither expressly nor inherently describes "a configuration manager operable to: select a statistical analysis model to apply to the standard pricing group from a set of statistical analysis models; and wherein the market analyzer is further operable to apply the selected statistical analysis model to the standard pricing group," as recited in Claim 13. Rather, it seems to simply suggest that retailers may use conventional software market analysis tools to analyze buying behaviors and patterns based on known data extracted from a consumer purchase repository. Anderson fails to describe a configuration manager and its ability to select a statistical analysis model, among others. The Examiner has not provided any explanation as to the applicability of the cited col. 6, lines 36-48 of Anderson to Claim 13.

As to Claim 14, the cited col 5, lines 55-61, col. 6, lines 36-43, and reference numbers 20 and 22 of Fig. 1 of Anderson neither expressly nor inherently describe the configuration manager as set forth in Claim 13 and further comprises "a standard pricing group manager operable to define the standard pricing group; a model manager operable to define the statistical analysis applied; and a supplier manager operable to manage information regarding suppliers." As discussed above with respect to Claim 13, Anderson fails to describe a configuration manage and consequently Anderson also fails to describe its standard pricing group manager, model manager, and supplier manager. More specifically, as discussed above with respect to Claim 9, Anderson's frequent shopper system does not appear to categorize beyond a single retailers' products and customers, let alone standard pricing groups. Also, the "statistical extracts" of Anderson are extracted data which may be used by retailers along with conventional software market analysis tools. The "statistical extracts" of Anderson do

not whatsoever anticipate "a model manager operable to define the statistical analysis applied," as recited in Claim 14. Furthermore, the reference numbers 20 and 22 of Fig. 1 of Anderson show that data captured at POS 20 is forwarded, in one direction, to retailer supervisory processor 22. They do not whatsoever anticipate "a supplier manager operable to manage information regarding suppliers," as recited in Claim 14.

As to Claims 16-17, the cited col. 3, line 65-col. 4, line 6 of Anderson describes that a retailer would input specific queries to retrieve particular types of information to determine purchasing behaviors of its consumers, the effectiveness of promotional efforts with respect to particular products, and ascertaining particular characteristics of consumers purchasing particular products. Anderson neither expressly nor inherently describes a request manager operable to "receive a request from a supplier for a set of results of the application of the statistical analysis; retrieve the set of results from the database; and communicate the set of results to the supplier," as recited in Claim 16. As discussed above with respect to Claims 3-4 and 6-7, the database of Anderson stores product, consumer, and transactional data for a single retail business entity. It does not derive market level results and it does not maintain any results from a statistical analysis applied on market transactions occurred at an electronic exchange. The Examiner has not provided any explanation as to the applicability of the cited col. 3, line 65-col. 4, line 6 of Anderson to Claim 16. Since Anderson fails to describe a request manager as recited in Claim 16, Anderson also fails to describe "wherein the request manager is further operable to return a summary of the set of transaction data to the supplier," as recited in Claim 17. The fact that Fig. 12(a) of Anderson shows a data model provided in the repository administration subsystem is irrelevant to the functionality of the request manager as claimed in Claim 17.

As to Claim 18, the cited col. 4, lines 19-49 of Anderson neither expressly nor inherently describes a request manager as claimed in Claim 16 "wherein the request manger is further operable to communicate the set of results in a format that is compatible with a revenue management software program," as recited in Claim 18. As discussed above with respect to Claim 5, "membership cards and promotional literature

such as coupons" do not whatsoever anticipate "a revenue management software program," as the Examiner has alleged.

As to Claim 19, the cited col. 3, line 65-col. 4, line 6 of Anderson neither expressly nor inherently describes a request manager as claimed in Claim 16 "wherein the request manager further comprises: a retrieval manager operable to retrieve the set of results from the database; and an aggregation manager operable to summarize the set of transaction data," as recited in Claim 19. The cited Fig. 12(a) of Anderson is irrelevant to the functionality of the aggregation manager as claimed in Claim 19 since Anderson fails to describe a request manager as claimed in Claim 16.

In summary, embodiments of the invention as claimed in Claims 1-36 are directed to a system and method for analyzing market transactions conducted electronically via the Internet. One advantage of the claimed invention is its ability to derive meaningful market level statistical analysis results drawing from market transactions among various sellers and buyers exchanging disparate products and services over the Internet. In this way, a supplier's performance can be compared to that of the market as a whole. More advantages of the invention are described in the Specification, e.g., page 4, paras. 6-10. In contrast, Anderson's frequent shopper system deals with transaction information of a single retail business entity where data is captured at the retailer's physical POS locations. Anderson's frequent shopper system cannot analyze market transactions conducted electronically via the Internet and derive meaningful market level statistical analysis results.

Accordingly, withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 15 and 20-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson. The rejections are respectfully traversed. There are no substantive rejections as to Claims 22-36. Thus, traversal to the rejections will be discussed below with respect to Claims 15 and 20-21.

As to Claim 15, the Examiner took Official Notice that "it was notoriously old and well known in the art to provide default values for parameters in statistical models if no direct parameters are available. It would have been obvious to a person of ordinary skill in the art to include this step to Anderson so that useful data can be generated, even in the event that all necessary parameters are not known." Applicant notes that the Examiner did not cite any reference to support the Official Notice. Claim 15 is reproduced below for the convenience of the Examiner:

> The system of Claim 13, wherein the configuration manager is further operable to define default values and standard parameters for the statistical analysis model.

Claim 13 is directed to a configuration manager - a functionality of a system for analyzing transactions at a Web site as claimed in Claim 8. Claim 13 particularly points out that the configuration manager is operable to select a statistical analysis model from a set of statistical analysis models. Claim 15 specifically claims that the configuration manager is operable to define default values and standard parameters for the statistical analysis model selected in Claim 13. At the time the invention was made, the configuration manager as claimed in Claim 13 was not known and neither was its ability to define default values and standard parameters for the statistical analysis model that it selects. There is no support in the record that "it was notoriously old and well known in the art [for a configuration manager] to provide default values for parameters in statistical models if no direct parameters are available."

Moreover, there is no support in Anderson that "[i]t would have been obvious to a person of ordinary skill in the art [at the time the invention was made] to include this step to [the alleged configuration manager of] Anderson so that useful data can be generated, even in the event that all necessary parameters are not known." On the

contrary, it seems that Anderson simply suggests that retailers may use conventional software market analysis tools to analyze buying behaviors and patterns based on known data extracted from a consumer purchase repository. See Anderson, col. 6, lines 36-44. Anderson does not appear to suggest generating useful data "even in the event that all necessary parameters are not known."

As to Claim 20 and 21, the Examiner took Official Notice that "it was old and well known in the art at the time of invention to schedule the automatic generation of statistical models for a business at regular intervals so that appropriate tracking of progress and results can be made." Applicant notes that the Examiner again did not cite any reference to support the Official Notice. Claims 20 and 21 are directed to a task manager, another functionality of the system as claimed in Claim 8. At the time the invention was made, the task manager as claimed in Claims 20 and 21 was not known and neither was its ability to, for example, schedule the application of the statistical analysis and prompt the market analyzer to apply the statistical analysis. There is no support in the record whatsoever that "it was old and well known in the art at the time of invention [for a task manager] to schedule the automatic generation of statistical models for a business at regular intervals."

Moreover, there is no support in Anderson that "[i]t would have been obvious to a person of ordinary skill in the art [at the time the invention was made] to include these steps to [the alleged task manager of] Anderson so that a user can have data produced, at regular intervals, that can be analyzed and compared over time, without having to continuously request this information." On the contrary, it seems that Anderson simply suggests that retailers may use conventional software market analysis tools to create value-added information targeted to particular consumers. See Anderson, col. 6, lines 16-20. For example, a retailer would input specific queries to retrieve particular types of information to determine purchasing behaviors of its consumers, the effectiveness of promotional efforts with respect to particular products, and ascertaining particular characteristics of consumers purchasing particular products. See Anderson, col. 3, line 65 through col. 4, line 6. Anderson does not appear to

suggest any desirability for the retailers to forego target specific queries in favor of "automatic generation of statistical models for a business at regular intervals."

For the foregoing reasons, Applicant believes that the factual assertion made by the Examiner is not properly officially noticed, not supported by any evidence in the record, and not considered to be common knowledge or well-known in the art at the time the invention was made. If the ground of this rejection is to be maintained in the next Office Action, Applicant respectfully requests the Examiner to produce authority for his statement. It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979).

Moreover, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). The examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

In view of the foregoing, withdrawal of this rejection is respectfully requested.

pending claims 1-36 is therefore respectfully solicited. Other than as explicitly set forth above, this reply does not include any acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. The Examiner is invited to telephone the undersigned at the number listed below for discussing an Examiner's Amendment or any suggested actions for accelerating prosecution and moving the present application to allowance.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

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